

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4924 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

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MANSUKH SIDA CHAVDA

Versus

DY. EXECUTIVE ENGINEER

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Appearance:

MR MD RANA for Petitioner  
MRS. VK PAREKH, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 28/08/97

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ORAL JUDGEMENT

The petitioner has come with a case that he was appointed as daily wager under respondent No.1 since 1.8.1992 but his services were terminated orally on 30.6.1997. The petitioner has raised a grievance with regard to the violation of Section 25-F of the Industrial Disputes Act and has submitted that although he had worked for a period much more than 240 days his services

have been terminated without fulfilling the condition precedent required under section 25-F of the Industrial Disputes Act. A statement showing the days of his working since 1.8.1992 to 9.6.1997 has been enclosed to evidence the fact that he had worked for a period much more than 240 days. An affidavit-in-reply dated 12.8.1997 has been filed. The correctness of the contents of the statement with regard to the days of working of the petitioner from 1.8.1992 to 9.6.1997 has not been disputed. All that has been submitted by the learned Assistant Government Pleader is that the petitioner had worked only upto 16.6.1997 and not upto 30.6.1997 and that he has been paid for a period of 14 days of June, 1997. It has been stated in the reply that the work for which the petitioner was called was not of any permanent nature and since the work was over there was no need to call him. Plea of an alternative remedy under the I.D.Act has also been raised. In the facts of this case, when the factum with regard to the days for which the petitioner had worked has not been disputed and when it is not the case of the respondent that retrenchment benefits as envisaged under section 25-F have been paid to the petitioner, the termination of the petitioner becomes null and void as condition precedent and the pre-requisite under section 25-F has not been complied with. In this view of the matter, it is not necessary to relegate the petitioner to the remedy under the I.D.Act when the violation of section 25-F of the I.D.Act has been proved on the basis of pleadings contained in the petition read with affidavit-in-reply filed on behalf of the respondents. The termination/retrenchment of the petitioner from 16.6.1997 or 30.6.1997 is hereby declared to be illegal and the respondents are directed to reinstate the petitioner and relegate him to the position which he was holding on 16.6.1997, as if his services had never been terminated and the petitioner shall also be entitled to all consequential benefits. It is, however, left open for the respondents to pass any appropriate orders in future in accordance with law. This Special Civil Application is accordingly allowed and the rule is made absolute in the terms as aforesaid. No order as to costs.

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m.m.bhatt